

## **SITE DEVELOPMENT PERMIT AMENDMENT**

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| <b>FILE NO.</b>                 | <b>HA84-185-03</b>  |
| <b>LOCATION OF PROPERTY</b>     | Northeast corner of South Winchester Boulevard and Tisch Way (550 South Winchester Boulevard)   |
| <b>ZONING DISTRICT</b>          | CG Commercial General   |
| <b>GENERAL PLAN DESIGNATION</b> | Urban Village Commercial  |
| <b>PROPOSED USE</b>             | Site Development Permit Amendment to allow the removal of 14 ordinance-size trees, modifications to the building façade, exterior walkway and landscaping improvements to an existing 104,498-square foot office building on an approximately 1.79-gross acre site. |
| <b>ENVIRONMENTAL STATUS</b>     | Exempt pursuant to CEQA Section 15301(c) for Existing Facilities  |
| <b>OWNER ADDRESS</b>            | John Muller<br>The Muller Company<br>18881 Von Karman Avenue, Suite 400<br>Irvine, CA 92612   |
| <b>APPLICANT ADDRESS</b>        | Rick Yeh<br>Studio G Architects<br>299 Bassett Street<br>San Jose, CA 95110   |

### **FACTS**

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the northeast corner of South Winchester Boulevard and Tisch Way at 550 South Winchester Boulevard. The subject 1.79-gross acre site is currently developed with an existing six-story 104,498-square foot office building. The site is generally surrounded by a Senior Living facility to the north, Tisch Way and Interstate 280 to the south, a six-story office building and parking garage to the east, and Winchester Boulevard and the Winchester Mystery House to the west.

2. **Project Description.** This project consists of a Site Development Permit Amendment to amend a previously approved Site Development Permit (File No. H84-185) to allow the removal of 14 ordinance-size trees, modifications to the building façade, exterior walkway and landscaping improvements to an existing 104,498-square foot office building on an approximately 1.79-gross acre site. The façade remodeling includes enclosing the upper level balconies, remodeling the primary entrance to the building, and removing the existing tower element along the south facing façade. The walkway and landscaping improvements include repaving and decking, adding wood feature walls and trellises, and updating existing landscaping with new plants, shrubs, and trees. The project also includes restriping and extending the existing Americans with Disabilities Act (ADA) pathway.
3. **General Plan Conformance.** The subject site is designated Urban Village Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. The façade modification and landscaping improvements would not alter the existing use at the site and would therefore be compatible with the character and form of the surrounding neighborhood.

The project is consistent with the following General Plan policies:

- a. **Community Design CD-1.11:** To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent façades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.
- b. **Community Design CD-4.9:** For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).

*Analysis: The façade remodel includes enclosing the upper level balconies, remodeling the primary entrance to the building, and removing the tower element along the south facing façade. The walkway and landscaping improvements include repaving and decking, adding wood feature walls and trellises, and updating existing landscaping with new plants, shrubs, and trees. The project also includes restriping and extending the existing ADA pathway. The façade remodel and walkway improvements also conform with General Plan policies for Community Design, as the project would update the existing building with new design elements and a more inviting building entrance. The walkway and landscaping redesign would create a more active and pedestrian oriented street frontage as well as provide an accessible path of travel from the street.*

4. **Zoning Conformance.** The subject site is located in the CG Commercial General Zoning District. Pursuant to Section 20.40.200, the project conforms in all respects to the provisions of Title 20 of the San José Municipal Code, including the development standards of the CG Commercial General Zoning District.
  - a. **Use:** There are no proposed changes to the existing office use at the subject site.
  - b. **Setbacks and Height:** The project would not modify the existing setbacks of the building. The height of the building would be reduced from 106 feet to 98 feet, as the tower element on the south facing façade would be removed. The existing rooftop mechanical screening would remain.

- c. **Parking:** The project does not propose any modification to the number of existing parking spaces at the subject site. The required number of vehicle parking spaces is 359 and 404 spaces are provided. The number of bicycle parking spaces required is 23 and 24 spaces are provided.
  - d. **Tree Removals:** The project consists of the removal of 14 fourteen ordinance-size trees. 26 (24-inch box) trees are required to be replanted on site. Based on the plans provided, the number of trees to be replaced on-site is 26.
5. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. The project is exempt from further environmental review pursuant to Section 15301(c) of the California Environmental Quality Act for Existing Facilities. As conditioned, the project construction is limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday.

## FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. **Site Development Permit Amendment Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings are made for the Project based on the above-state findings related to General Plan, Zoning and CEQA conformance and for the reasons state below, and subject to the conditions set forth in this permit.

- a. The Site Development Permit Amendment, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and

*Analysis: The project is consistent with the Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Commercial General. The project consists of remodeling the façade of the building, repaving the walkway, improving landscaping, and updating the ADA pathway. The building façade would be updated to create a more attractive street presence as well as providing additional space and amenities for pedestrians. The existing office use at the site will remain.*

- b. The Site Development Permit Amendment, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: The project does not propose any changes to the existing setbacks of the building. The maximum height of the building would be reduced from 106 feet to 98 feet as the tower element on the south facing façade would be removed as part of the façade remodeling. There are no changes to the number of vehicle or bicycle parking spaces provided on-site. The number of trees to be removed requires mitigation of 26 24-inch box trees. As shown on the landscape plan, 26 24-inch box trees are to be replaced on-site.*

- c. The Site Development Permit Amendment, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: The project is consistent with the Public Noticing and Public Outreach City Council Policies. The project has had an on-site sign posted on the site and has been noticed for public hearing to a radius of 500 feet.*

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: There are no proposed changes to the orientation or location of the existing building. The elevation of the building would be reduced by approximately 8 feet. The office building use would remain.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: There are no proposed changes to the orientation and location to the existing building. The façade remodeling and landscaping improvements would be compatible and aesthetically harmonious with the adjacent office building to the southeast and the senior living facility to the north. The new glazing, stucco finish, and EIFS cladding would be aesthetically harmonious, in terms of materials and colors, with the adjacent office building to the southeast, which also has similar elements. The landscaping upgrades and remodeling of the primary entrance would create a more attractive street presence as well as provide an accessible path of travel from both the street and parking garage.*

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: Pursuant to section 15301(c) of the California Environmental Quality Act (CEQA), the project is exempt as it consists of minor landscaping improvements and the remodeling of the façade of an existing building. The alterations to the building would involve negligible or no expansion of use as the existing office use at the subject site would remain.*

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: The project consists of landscaping and walkway upgrades that would enhance the appearance of the building from the street and provide a more walkable environment. The existing rooftop screening will remain. The trash and service areas will remain at the existing location at the rear of the site, away from the street.*

- h. Traffic access, pedestrian access and parking are adequate.

*Analysis: There are no changes to the primary egress/ingress to the site. The existing driveways along Winchester Boulevard and Tisch Way would remain. The project would include updating the existing ADA pathway from Tisch Way to allow for a more accessible path of travel from the sidewalk to the entrance of the building. Additional walkway improvements would be made around the perimeter of the building as well as from the parking garage to each of the building entrances. The site provides the required number of vehicle and bicycle parking spaces per the San José Municipal Code.*

- i. Amendments may be granted at the discretion of the Director, Planning Commission on appeal, or City Council as appropriate upon finding that the amendment does not negate any findings required by Section 20.100.940.

*Analysis: As stated above, the façade remodeling and landscaping improvements would be consistent with the existing Site Development Permit (File No. H84-185). The project would update the existing building and support the existing office use at the subject site.*

In accordance with the findings set forth above, a Site Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1. Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
- 2. Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the Director, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
- 3. Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in



the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

- 4. Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
- 5. Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved **HA84-185-03** plans entitled, “Exterior Improvements for the Muller Company” dated January 23, 2020, on file with the Department of Planning, Building and Code Enforcement (“Approved Plans”), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
- 6. Conformance to Other Permits.** Unless specifically modified with this Permit, this project shall conform to all of the requirements of previous permits including: (Site Development Permit File No. H84-185).
- 7. Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
- 8. Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
- 9. Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
- 10. Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
- 11. Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
- 12. Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.

- 13. Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
- 14. Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
- 15. No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- 16. Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
- 17. Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
- 18. Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
- 19. Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
- 20. No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
- 21. No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
- 22. Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
- 23. Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, HA84-185-03 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins

with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- e. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
- f. *Other.* Such other requirements as may be specified by the Chief Building Official.

**24. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code.

**25. Tree Replacement.** 14 trees are to be removed. The total number of replacement trees required to be planted would be 26 trees.

- a. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- b. The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- c. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

**26. Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San Jose General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San Jose.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.



**27. Revocation, Suspension, Modification.** This Site Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **11<sup>th</sup> day of March, 2019.**

Rosalynn Hughey, Director  
Planning, Building, and Code Enforcement

Deputy